
UTAH LABOR COMMISSION

DEBRA HENDRICKSON,

Petitioner,

vs.

SMITH'S FOOD AND DRUG CENTER,

Respondent.

**ORDER ON MOTION
FOR REVIEW**

Case No. 08-0446

Smith's Food and Drug Center ("Smith's") asks the Utah Labor Commission to review Administrative Law Judge Lima's dismissal of Debra Hendrickson's claim for benefits under the Utah Occupational Disease Act, Title 34A, Chapter 3, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to §63G-4-301 of the Utah Administrative Procedures Act, §34A-3-102(2) of the Utah Occupational Disease Act and §34A-2-801(3) of the Utah Workers' Compensation Act.

BACKGROUND AND ISSUE PRESENTED

Ms. Hendrickson claimed benefits for an occupational disease she allegedly developed while working for Smith's. Ms. Hendrickson asserts that she suffered mental stress in the form of posttraumatic stress disorder and panic disorder with agoraphobia as a result of ongoing workplace harassment. Judge Lima determined that Ms. Hendrickson's claim was barred by §34A-3-106(5) of the Utah Occupational Disease Act and therefore dismissed the claim without prejudice based on a lack of jurisdiction.

Smith's challenges Judge Lima's decision to dismiss the claim without prejudice. Smith's argues that Ms. Hendrickson's claim should be dismissed with prejudice because the basis for her mental stress claim is not allowed under §34A-3-106(5).

DISCUSSION AND CONCLUSION OF LAW

Section 34A-3-106(5) of the Utah Occupational Disease Act provides that alleged harassment "otherwise actionable" at law may not form the basis for a mental stress claim under the Utah Occupational Disease Act. Because Ms. Hendrickson's mental stress claim was based on alleged workplace harassment which is otherwise actionable under the Utah Antidiscrimination Act, the Commission does not have subject matter jurisdiction over the claim. Smith's argues that Ms. Hendrickson's claim should be dismissed with prejudice because the basis for the claim is not allowed under §34A-3-106(5).

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The general rule on this issue appears to be “[s]ubject matter jurisdiction and the merits are considered to be intertwined when subject matter jurisdiction is dependent upon the same statute which provides the substantive claim in the case.” *Sizova v. Nat’l Inst. of Standards & Tech.*, 282 F.3d 1320, 1324 (10th Cir. 2002)(internal quotation omitted). In this case, subject matter jurisdiction and the substantive mental stress claim are both dependent upon the same statute, the Utah Occupational Disease Act. Therefore, a dismissal for lack of subject matter jurisdiction is also a determination on the merits of Ms. Hendrickson’s claim. Because the dismissal was based on a lack of jurisdiction as well as the merits of the case, the Commission concludes that Ms. Hendrickson’s claim should be dismissed with prejudice.

ORDER

The Commission modifies Judge Lima’s decision of June 12, 2008, and dismisses Ms. Hendrickson’s claim with prejudice. It is so ordered.

Dated this 28th day of January, 2010.



Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.